

UNITED STATES BANKRUPTCY APPELLATE PANEL OF THE TENTH CIRCUIT

These papers have been prepared by the staff of the BAP Clerk's Office to assist you in understanding the Bankruptcy Appellate Panel process. These materials are the informal opinions of the BAP Clerk's Office staff; they do not constitute the official opinion of the U.S. Bankruptcy Appellate Panel of the Tenth Circuit and are not a substitute for the Federal Rules of Bankruptcy Procedure or the Local Rules of the U.S. Bankruptcy Appellate Panel of the Tenth Circuit. No practice guide can substitute for the independent judgment of an attorney examining the rules in the context of the facts of the case.

We sincerely hope that you will find these materials useful. Please help us continue to develop this product by directing your comments to the BAP Clerk's Office.

BAP Quick Reference Guide

**Note: All documents other than briefs and appendices to briefs may be filed by fax.
See 10th Cir. BAP L.R. 8008-1(d).**

WHAT	WHO	WHEN	WHERE	REMARKS
Notice of Appeal Fed. R. Bankr. P. 8001, 8002	Appellant	Within 10 days from entry of an order or judgment.	Bankruptcy Court	Must be signed by counsel or all appellants.
Appellant's Election to the District Court 28 U.S.C. § 158(c)(1)(A); Fed. R. Bankr. P. 8001(e); 10th Cir. BAP L.R. 8001-1	Appellant	With the notice of appeal.	Bankruptcy Court	Must be a separate written document served on all parties.
Other Party's Election to the District Court 28 U.S.C. § 158(c)(1)(B); Fed. R. Bankr. P. 8001(e); 10th Cir. BAP L.R. 8001-1	Party other than appellant	Within 30 days after the Bankruptcy Court's service of the notice of appeal (plus 3 days for mailing, if served by mail).	BAP	Must be a separate written document served on all parties.

WHAT	WHO	WHEN	WHERE	REMARKS
Cross Appeal Fed. R. Bankr. P. 8002(a); 10th Cir. BAP L.R. 8001-1	Party other than appellant	Within 10 days of the date on which the first notice of appeal was filed.	Bankruptcy Court	Must be signed by counsel or all appellants. An appeal and a cross-appeal will be treated as procedurally consolidated for purposes of briefing and oral argument. (Rules regarding Election to the District Court apply; a cross-appellant's election must be filed with the Bankruptcy Court at the time of filing the cross-appeal <u>and</u> with the BAP within 30 days after service of the first notice of appeal.
Motion for Leave to Appeal Interlocutory Order Fed. R. Bankr. P. 8003	Appellant	With the notice of appeal.	Bankruptcy Court	Must be served on all parties. (Rules regarding Election to the District Court apply.)
Statement of Interested Parties 10th Cir. BAP L.R. 8018-3.	All parties	Within 10 days after the date of notice that the appeal has been docketed with the BAP, or with a motion, whichever is first.	BAP	Must be served on all parties. The Statement of Interested Parties must be kept current.

WHAT	WHO	WHEN	WHERE	REMARKS
Designation of the Record Fed. R. Bankr. P. 8006; 10th Cir. BAP L.R. 8006-1(b)	Appellant	<u>In Bankruptcy Court</u> : within 10 days after the later of: (1) the date of filing the notice of appeal; (2) the date of entry of an order granting leave to appeal; or (3) the date of entry of an order disposing of the last timely Rule 8002(b) motion. <u>In BAP</u> : Within 10 days after the date of the notice that the BAP Clerk's Office has docketed the Notice of Appeal.	Bankruptcy Court <u>and</u> Copy to BAP	Must be served on all parties. A copy of the designation of record must also be filed with the BAP. This copy does not need to be file-stamped by the Bankruptcy Court.
Designation of Additional Items to be Included in the Record Fed. R. Bankr. P. 8006; 10th Cir. BAP L.R. 8006-1(b)	Cross-Appellant (mandatory); Appellee (optional)	Within 10 days after service of the appellant's Statement of Issues (plus 3 days for mailing, if served by mail).	Bankruptcy Court <u>and</u> BAP	Must be served on all parties. A copy of the designation of record must also be filed with the BAP. This copy does not need to be file-stamped by the Bankruptcy Court.

WHAT	WHO	WHEN	WHERE	REMARKS
Statement of Issues Fed. R. Bankr. P. 8006, 10th Cir. BAP L.R. 8006-1(b)	Appellant; Cross-Appellant	Appellant: <u>In Bankruptcy Court</u> : within 10 days after the later of: (1) the date of filing the notice of appeal; (2) the date of entry of an order granting leave to appeal; or (3) the date of entry of an order disposing of the last timely Rule 8002(b) motion. <u>In BAP</u> : Within 10 days after the date of the notice that the BAP Clerk's Office has docketed the Notice of Appeal. Cross-Appellant: within 10 days after service of the Appellant's Statement of Issues (plus 3 days for mailing, if served by mail).	Bankruptcy Court <u>and</u> BAP	Must be served on all parties. A copy of the statement of issues must also be filed with the BAP. This copy does not need to be file-stamped by the Bankruptcy Court.
Ordering Transcript Fed. R. Bankr. P. 8006, 8007(a)	Appellant or appellee, if transcript is necessary.	Immediately after filing the designation of record.	Bankruptcy Court	Parties must follow requirements of Bankruptcy Court to order the transcript and to make satisfactory arrangements for payment of the transcript.

WHAT	WHO	WHEN	WHERE	REMARKS
Notice of Constitutional Question 10th Cir. BAP L.R. 8018-8	Party who questions the constitutionality of a federal or state statute.	Within 10 days after the date of the notice that the BAP Clerk's Office has docketed the Notice of Appeal.	BAP	Note: the notice is required only if the appropriate attorney general is not a party to the appeal. Must be served on all parties.
Preliminary Transmission 10th Cir. BAP L.R. 8007-1(a)	Bankruptcy Court	Promptly upon the filing of the notice of appeal.	BAP	Transmit by facsimile or by e-mail. Include certificate of service of Notice of Appeal; copy of the Notice of Appeal, order from which the appeal arises, and docket sheets for the underlying bankruptcy case and, if applicable, adversary proceeding.

WHAT	WHO	WHEN	WHERE	REMARKS
Supplemental Transmission 10th Cir. BAP L.R. 8007-1(b)	Bankruptcy Court	When necessary.	BAP	Include copies of all <u>post-judgment</u> motions (if any) and orders, together with copies of related docket entries. Examples: (1) a motion to reconsider or rehear the appealed order or judgment, or a motion to extend time to file the notice of appeal; (2) Premature Notice of Appeal was filed and the bankruptcy court subsequently enters an order; (3) an Election is filed (even though it is supposed to be filed with the BAP).
Brief - Opening Fed. R. Bankr. P. 8009(a)(1); 10th Cir. BAP L.R. 8010-1	Appellant	Within 45 days after the date of the notice that the BAP Clerk's Office has docketed the Notice of Appeal.	BAP	Must be served on all parties. Original and 3 copies required.
Brief - Response Fed. R. Bankr. P. 8009(a)(2); 10th Cir. BAP L.R. 8010-1	Appellee	Within 15 days after service of appellant's brief (plus 3 days for mailing, if served by mail).	BAP	Must be served on all parties. Original and 3 copies required.

WHAT	WHO	WHEN	WHERE	REMARKS
Brief - Reply Fed. R. Bankr. P. 8009(a)(3); 10th Cir. BAP L.R. 8010-1	Appellant (optional)	Appellant: Within 10 days after service of appellee's response brief (plus 3 days for mailing, if served by mail).	BAP	Must be served on all parties. Original and 3 copies required.
Cross-Appeal: Appellant/Cross-Appellee's opening brief (First Cross- Appeal Brief) Fed. R. Bankr. P. 8009(a)(1); 10th Cir. BAP L.R. 8010-1	Appellant	Within 45 days after the date of the notice that the BAP Clerk's Office has docketed the Notice of Appeal.	BAP	Must be served on all parties. Original and 3 copies required. This brief must contain the issues and arguments pertinent to the appeal.
Cross-Appeal: Appellee/Cross-Appellant's Opening Brief (Second Cross-Appeal Brief) Fed. R. Bankr. P. 8009(a)(2); 10th Cir. BAP L.R. 8010-1	Appellee/ Cross- Appellant	Within 15 days after service of appellant's brief (plus 3 days for mailing, if served by mail).	BAP	Must be served on all parties. Original and 3 copies required. This brief must contain the issues and arguments pertinent to the cross appeal and contain the response to appellant's brief.
Cross-Appeal: Appellant/Cross-Appellee's Response Brief (Third Cross-Appeal Brief) Fed. R. Bankr. P. 8009(a)(2); 10th Cir. BAP L.R. 8010-1	Appellant/ Cross- Appellee	Within 15 days after service of cross-appellant's brief (plus 3 days for mailing, if served by mail).	BAP	Must be served on all parties. Original and 3 copies required. This brief may contain the reply to the appellee/ cross-appellant's response (optional) and must contain the response to the cross- appellant's opening brief.

WHAT	WHO	WHEN	WHERE	REMARKS
Cross-Appeal: Appellee/Cross-Appellant's Reply Brief (Fourth Cross- Appeal Brief) Fed. R. Bankr. P. 8009(a)(3); 10th Cir. BAP L.R. 8010-1	Appellee/ Cross- Appellant (optional)	Within 10 days after service of cross-appellant's brief (plus 3 days for mailing, if served by mail).	BAP	Must be served on all parties. Original and 3 copies required. This brief must contain the reply to the cross-appellee's response.
Appendix Fed. R. Bankr. P. 8009(b); 10th Cir. BAP L.R. 8009-1(b)	Appellant (mandatory); appellee (optional)	With the party's brief.	BAP	Must be served on all parties. Original and 3 copies required. Copies of the appendix must be bound separately from the brief. Avoid duplication of items included in a previously filed appendix; adopt by reference.
Appendix - Motion to Exempt Documents 10th Cir. BAP L.R. 8009-1(b)(8)	Party filing the appendix	Prior to the filing of the appendix or at the time of filing the appendix.	BAP Clerk's Office	Must be served on all parties.
Appendix - Transcripts Fed. R. Bankr. P. 8009(b)(9); 10th Cir. BAP L.R. 8009-1(b)(5)	Party filing the appendix	With the appendix.	BAP	Only those portions of the transcripts necessary for consideration of the issues on appeal should be included in the appendix. Note that <u>all</u> of the transcripts should be included if the appellant intends to challenge a finding of fact on appeal.

WHAT	WHO	WHEN	WHERE	REMARKS
Motion Practice Fed. R. Bankr. P. 8011; 10th Cir. BAP L.R. 8011-1(a), (b)	Movant	Varies.	BAP	Must be served on all parties. All motions must contain the position of the opposing party.
Response to Motion Fed. R. Bankr. P. 8011(a)	Non-Moving Party	Within 7 days after service of motion (plus 3 days for mailing if served by mail).	BAP	Must be served on all parties.
Clerk's Authorization to Act on Certain Motions 10th Cir. BAP L.R. 8016-1				The Clerk's authority applies only to motions that conform to all rules and are properly served and filed. All motions must contain the position of the opposing party.
Motion for Extension of Time Fed. R. Bankr. P. 8011; 10th Cir. BAP L.R. 8011-1	Party filing the brief or other pleading	As needed.	BAP	Must be served on all parties. Motion must state opposing party's position and justification for the extension.
Emergency Motions Fed. R. Bankr. P. 8011(d); 10th Cir. BAP L.R. 8011-2	Either party	Varies.	BAP	Must be served on all parties. Must notify BAP Clerk's Office and opposing counsel of intent to file. Must include an appendix. All motions must contain the position of the opposing party.

WHAT	WHO	WHEN	WHERE	REMARKS
Appendix to Emergency Motion 10th Cir. BAP L.R. 8011-2(c)	Movant	With the emergency motion.	BAP	Must be served on all parties. Must contain a copy of the notice of appeal, order being appealed, and any other document necessary to rule on the motion.
Stay Pending Appeal or Injunction Fed. R. Bankr. P. 8005; 10th Cir. BAP L.R. 8005-1	Movant	At any time.	<u>With the Bankruptcy Court:</u> in the first instance. <u>With the BAP:</u> if Bankruptcy Court denies motion or otherwise does not rule on it.	Must be served on all parties. If an emergency motion, should also comply with 10th Cir. BAP L.R. 8011-2.
Appendix to Stay Pending Appeal or Injunction 10th Cir. BAP L.R. 8005-1(b)	Movant	With the motion for stay or injunction.	BAP	Must be served on all parties. Must contain any document, including transcript(s), necessary to decide the motion.
Motion for Certification of Questions of State Law 10th Cir. BAP L.R. 8018-7	Either party or upon the court's own motion	No later than with the movant's brief.	BAP	Must be served on all parties.
Motion for Submission on the Briefs Fed. R. Bankr. P. 8011; 10th Cir. BAP L.R. 8011-1	Either party	Once principal briefs are filed.	BAP	Must be served on all parties. All motions must contain the position of the opposing party.

WHAT	WHO	WHEN	WHERE	REMARKS
Motion for Rehearing Fed. R. Bankr. P. 8015; 10th Cir. BAP L.R. 8015-1	Either party	Within 10 days after entry of judgment.	BAP	Must be served on all parties. Only one motion from any party will be considered. The timely filing of a motion for rehearing will stay the mandate.
Mandate 10th Cir. BAP L.R. 8016-3	BAP Clerk's Office	Immediately after expiration of time for filing motion for rehearing (unless shortened or enlarged by order of the court); or, if stay of the mandate is granted, immediately after the BAP files an order of the Tenth Circuit Court of Appeals disposing of the appeal.	Bankruptcy Court	Certified copy of judgment and copy of opinion of the court, if any, constitutes the mandate.
Motion for Stay of Judgment/Mandate Pending Appeal to the Tenth Circuit Court of Appeals Fed. R. Bankr. P. 8017(b); 10th Cir. BAP L.R. 8016-3(c)	Either party	Prior to issuance of mandate.	BAP	Must be accompanied by proof of service on all other parties. Stay cannot exceed 30 days unless extended for cause shown or notice of appeal is filed during the period of stay. May require a bond.

WHAT	WHO	WHEN	WHERE	REMARKS
Notice of Appeal to Tenth Circuit Court of Appeals Fed. R. App. P. 4(a), as made applicable by Fed. R. App. P. 6	Either party	Within 30 days after date of entry of opinion or order disposing of appeal (60 days if the United States is a party).	BAP	Should be accompanied by (1) \$255.00 filing fee, unless appellant is the United States, and (2) sufficient copies for the court to serve all parties.